

ECKERT SEAMANS CHERIN & MELLOTT

ATTORNEYS AT LAW

February 14, 1997

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213 Market Street
Post Office Box 1248
Harrisburg, PA 17108
Telephone 717/237-6000
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Via Fax Transmission

Federal Elections Commission
Office of General Counsel
999 East Street NW
Washington, DC 20463

COPY

ATTENTION: Larry Noble, Esquire

Re: Request for Advisory Opinion

Dear Mr. Noble:

I am writing on behalf of Eckert Seamans Cherin & Mellott, L.L.C. pursuant to 11 CFR § 112 *et seq.* to request an advisory opinion. Eckert Seamans is a limited liability company organized under the laws of Pennsylvania. Previously Eckert Seamans was a partnership under the laws of Pennsylvania. I am requesting that you advise Eckert Seamans as to the limitations placed on a limited liability company which is organized under the laws of Pennsylvania. Specifically, may Eckert Seamans make contributions to federal candidates and political action committees in its own name, out of its general treasury fund?

Your response may be mailed to Robert L. Shuster, 213 Market Street, Post Office Box 1248, Harrisburg, PA 17108.

Sincerely,

Harrisburg

Pittsburgh

Allentown

Philadelphia

Boston

Fort Lauderdale

Boca Raton

Miami

126983.1

Tallahassee

Washington, D.C.

Robert L. Shuster

RLS/bc

ROBERT L. SHUSTER
717/ 237-6093

ECKERT SEAMANS CHERIN & MELLOTT

ATTORNEYS AT LAW

March 19, 1997

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Harrisburg, PA 17108
Telephone 717/237-6000
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AOR 1997-04

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FEDERAL ELECTIONS
COMMISSION
OFFICE OF GENERAL COUNSEL

Brad Litchfield, Esquire
Associate General Counsel
Federal Elections Commission
Office of General Counsel
999 East Street NW
Washington, DC 20463

Re: Request for Opinion Letter

Dear Mr. Litchfield:

Per your request, I am attaching a copy of the Operating Agreement for Eckert Seamans Cherin & Mellott, LLC. I am also attaching a copy of my original request for an opinion letter. If there is additional information which you require, please do not hesitate to contact me at your earliest convenience.

Sincerely,



Robert L. Shuster

RLS:smb

Enclosure

cc: Michael R. Stabile, Esquire (w/o enclosure)

Harrisburg

Pittsburgh

Allentown

Philadelphia

Boston

Fort Lauderdale

Boca Raton

Miami

Tallahassee

Washington, D.C.

ROBERT L. SHUSTER
717/ 237-6093

ECKERT SEAMANS CHERIN & MELLOTT, L.L.C.

OPERATING AGREEMENT

Dated as of January 1, 1997

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OPERATING AGREEMENT

This Operating Agreement ("Agreement") is made as of the 1st day of January, 1997, by and among those persons whose names are set forth and whose signatures are subscribed at the end of this Agreement (the "Members") and shall become effective in accordance with Article One hereof.

W I T N E S S E T H:

ARTICLE ONE. RESTRICTED PROFESSIONAL COMPANY.

The Members have agreed to form, and pursuant to a certificate of organization filed in the office of the Department of State of the Commonwealth of Pennsylvania (the "Certificate of Organization") have formed, a limited liability company that is a restricted professional company (the "Company") for the purpose of engaging in the general practice of law and other activities permitted by 15 Pa. C.S. § 8996(a) or any successor provision under the name of Eckert Seamans Cherin & Mellott, L.L.C., the Company to continue until dissolution as provided in Article Seven. The Company is the successor to the Pennsylvania general partnership known as Eckert Seamans Cherin & Mellott (the "Partnership") pursuant to the merger by operation of law of the Partnership with and into the Company resulting from the contribution to the Company by all of the Partners of the Partnership of all of their interests in the Partnership in return for interests in the Company (the "Merger"). The Merger was effective as of 12:01 a.m. on January 1, 1997 (the "Effective Time"). This Agreement shall become effective as of the Effective Time. The persons signing this Agreement are those who are equity partners ("Partners") in the Partnership immediately prior to the Effective Time, each of whom shall automatically

become a Member as of the Effective Time. Any person admitted as a Member of the Company after the Effective Time shall be subject to and entitled to the benefits of this Agreement only as and from the date of admission set forth in a written agreement by which such new Member joins in and agrees to be bound by this Agreement, and any "Units" (as defined in Article Six) held by such a Member shall be prorated for the calendar year of admission. Only natural persons licensed to practice law are eligible to be Members.

ARTICLE TWO. DEFINITIONS.

In this Agreement the following terms shall have the following meanings, respectively:

A. The term "Eligible Member" means a Member whose name is listed on Exhibit 1, attached hereto, each such Eligible Member having been a partner in the predecessor partnership of the Partnership as of March 1, 1990.

B. The term "Executive Committee" means the Executive Committee of the Company as defined in Article Four.

C. The term "Office Files" means all correspondence, briefs, documents and other papers relating to the professional and business affairs of the Company.

D. The term "Operations Committee" means the Operations Committee of the Company as defined in Article Four.

E. The term "Members' Retirement Plan" means the Eckert Seamans Cherin & Mellott Partners' Retirement Plan dated as of January 1, 1975, as heretofore or hereafter amended.

F. The term "Settlement Date" for a particular Member means (a) in the case of the retirement of such Member under the terms of the Members' Retirement Plan or the death of such Member, the last day of the calendar quarter during which such retirement or death occurs and (b) in the case of the withdrawal or expulsion of such Member, the effective date of such withdrawal or expulsion.

G. The term "Settlement Year" for a particular Member means the calendar year in which the Settlement Date for such Member occurs.

H. The term "Tangible Personal Property" means all books, furniture, rugs, carpets, filing cases, typewriters, appliances, machines, equipment, stationery, supplies and similar personal property located in the offices or other premises occupied by the Company and all replacements of said property and additions thereto and the proceeds of any sales thereof, excluding, however, such items located in a Member's office which, pursuant to Article Eight of this Agreement, are to be treated as property of such Member and such other items located elsewhere as are loaned by a Member to the Company and labeled as the property of such Member.

ARTICLE THREE. RIGHTS OF MEMBERS; VOTING.

Management of the Company shall be vested in the Members. Notwithstanding any other provision of this Agreement, the admission and expulsion of Members, amendment of this Agreement and all other matters required by this Agreement to be determined upon a vote of the Members shall be decided in accordance with this Article Three. The voting rights and powers of the Members and the number of their votes under the provisions of this Agreement which provide for action upon a vote of the Members shall

be one vote for each Unit allocated to each Member, and the affirmative vote of Members holding in the aggregate a majority of the votes representing the then total outstanding Units shall be binding on all Members as to any such matter. Voting of the Members may be by proxy under such procedures as may be established from time to time by the Executive Committee, and the presence in person or by proxy of Members holding in the aggregate a majority of the votes representing the then total outstanding Units shall be sufficient to establish a quorum at any meeting of the Members. The allocation of net earnings of the Company to the holders of A Units and B Units pursuant to Paragraph D of Article Six and the determination of capital contributions to the Company by the holders of A Units and B Units pursuant to Article Five shall not create separate classes of Units for the purpose of voting or for any other purpose. Meetings of the Members shall be convened upon call of the Executive Committee, provided that, at any time, Members holding in the aggregate at least 10% of the then total outstanding Units may make written request to the Executive Committee to call a special meeting of the Members for the purpose or purposes set forth in such written request, and any meeting of the Members convened pursuant to such a request shall be limited to the purpose or purposes so specified.

ARTICLE FOUR. EXECUTIVE AND OPERATIONS COMMITTEES.

A. **General.** For convenience the Members agree to constitute an Executive Committee and an Operations Committee in the manner and for the purposes herein provided. As provided in this Article Four, the Executive Committee and the Operations Committee will have the right, power, duty and responsibility to act for and on

behalf of the Company, except in respect of the matters required by this Agreement to be determined upon a vote of the Members.

B. Executive Committee. The Members hereby designate as the members of the Executive Committee for 1997 those 12 Members who served on the Executive Committee of the Partnership for 1996. For years after 1997, the Members will vote annually to elect Members to serve on the Executive Committee, with the number, terms and qualifications of members of the Executive Committee and the procedures for nominating and electing candidates for such positions to be hereafter determined by vote of the Members. The Executive Committee will not conduct the day-to-day business of the Company, but rather will serve as a policy-making body. Regular meetings of the Executive Committee will be held at least six times per year, with special meetings to be called and conducted as and when the same shall be needed in order to act on any matter requiring action by the Executive Committee or for other good reason. The Executive Committee from time to time may establish rules and procedures governing the conduct of its business, including with respect to the voting by its members by proxy, it being understood that the presence in person or by proxy of a majority of the members of the Executive Committee then serving as such shall be sufficient to establish a quorum at any meeting of the Executive Committee. The rights, powers, duties and responsibilities of the Executive Committee include, but will not be limited to, the following: (i) establishing the policies and budgetary goals within which the Operations Committee is to conduct the operations of the Company (ii) opening and closing offices of the Company; (iii) borrowing money for and on behalf of the Company; provided that a vote of the Members shall be required with respect to loans,

which when aggregated with other loans of similar duration are (a) for an amount in excess of \$ _____ for loans with a duration of more than one year and (b) for an amount in excess of \$ ___ per Unit then outstanding for loans with a duration of less than one year, (iv) appointing one of the members of the Executive Committee to act as Chairman of the Executive Committee, (v) appointing a Member to fill any vacancy on the Executive Committee which may occur by reason of the death, resignation, incapacity, withdrawal or expulsion of any member thereof for the remainder of the then current term, (vi) appointing three Members to serve as the Operations Committee of the Company for a one-year term, (vii) appointing a person (who need not be either a Member or an attorney) to act as Executive Director of the Company, such person being responsible for performing such duties and responsibilities under the supervision of each of the Executive Committee and the Operations Committee as such committees may determine, (viii) appointing department chairs, assistant department chairs, and partners-in-charge of the various offices of the Company, each for terms not to exceed one year, (ix) appointing members of standing and ad hoc committees, all such appointments not to exceed one year, (x) long-range strategic planning, acquisition and growth strategies and business development planning, (xi) establishing the allocation of Units among the Members, awarding bonuses in accordance with Paragraph C of Article Six and establishing the compensation of Special Members and Special Counsel, (xii) providing reports to the Members on a monthly basis regarding the status of efforts to achieve the Company's financial objectives, (xiii) calling and conducting meetings of the Members following the close of each calendar quarter to review the general state of the Company, the financial results for the preceding quarter, significant

developments occurring since the last meeting of the Members, and such other matters as the Executive Committee shall deem appropriate to bring to the attention of the Members or to be acted upon by the Members, (xiv) recommending new members to the Members and their Unit allocations, (xv) recommending to the Members that a Member be expelled, (xvi) subject to any limitations contained in the Certificate of Organization, recommending that the Company form and/or invest in entities for the conduct of business other than the practice of law, with the Company's formation of or investment in any such entity to be subject to approval by vote of the Members, and (xvii) calling, at the instance of the Executive Committee or upon the written request of Members pursuant to Article Three, and conducting special meetings of the Members as and when the same shall be needed in order to act on any matter requiring action by the Members or for other good reason, and establishing rules and procedures, not inconsistent with the provisions of this Agreement, for the conduct of business by the Members, including the voting by proxy, at any meeting of the Members.

C. Operations Committee. The members of the Operations Committee will be appointed by the Executive Committee for a one-year term and will serve at the discretion of the Executive Committee. The members of the Operations Committee will select one of themselves to act as Chairman of the Operations Committee. The Operations Committee will be responsible for conducting the day-to-day operations of the Company within the policies and budgetary goals established by the Executive Committee, for reporting regularly to the Executive Committee regarding the operations of the Company and for making recommendations to the Executive Committee regarding actions to be taken by the

Executive Committee, and the Operations Committee may appoint persons to act in the capacities described in clauses (viii) and (ix) of Paragraph B of this Article Four pending action by the Executive Committee regarding such appointments.

D. Effect of Prior Elections, Appointments and Approvals. Each election, appointment and approval described in Article Thirteen of the Partnership Agreement which was in effect immediately prior to the Effective Time shall remain in effect for such period of time as it would have been had the Merger not occurred.

ARTICLE FIVE. CAPITAL.

The capital of the Company shall be contributed by the respective Members at the rates of \$___ for each A Unit and \$___ for each B Unit allocated to the particular Member. As of the Effective Time, each Partner's capital contributions to the Partnership as shown on the books of the Partnership immediately prior to the Effective Time shall be deemed to have been made to the Company. The rates of capital contributions will be increased by an additional \$__ per Unit for each of the calendar years 1997 through 2000, except if and to the extent that any such increase is deferred by action of the Executive Committee, and the capital contributions of each Member at the then applicable rates (based on the Units then held by each of them) shall be paid on or before March 31 of each of such years. Payments of capital contributions by Members to the Company and returns of capital by the Company to Members shall be made within 90 days following the effective date of any adjustment in the allocation of Units or within such other time period as the Executive Committee may reasonably determine, except that (a) upon the withdrawal, retirement, expulsion or death of any Member, the amount of the capital account of the withdrawing,

retiring, expelled or deceased Member shall be paid to such Member or to the executor or administrator of such Member's estate not later than March 31 of the calendar year following the Settlement Year for such Member and (b) unless approved by vote of the Members, payment of the capital contribution of a newly admitted Member shall be made within 90 days after such Member's date of admission. The Members recognize and agree that the amount of any Member's capital account at any particular time shall be determined in accordance with Article Sixteen, reduced by the amount of any expense recognized for federal income tax purposes but not yet recognized for capital account purposes.

ARTICLE SIX. DISTRIBUTIONS, UNIT ALLOCATIONS.

A. **Standard Allocations/Distributions.** The Company's net earnings or losses for each calendar year shall be divided among the Members in proportion to the units of membership interest in the Company ("Units") allocated to each of them and subject to the priorities and limitations set forth in Paragraph D of this Article Six. As of the Effective Time, the allocation of Units among the Members shall be the same as the allocation of units of interest in the Partnership among the Partners as shown on the books of the Partnership immediately prior to the Effective Time. The allocation of Units among the Members is subject to further adjustment from time to time by reason of the admission of additional members upon a vote of the Members, the retirement or death of Members or the withdrawal or expulsion of Members as provided in this Agreement and, further, may be amended at any time, with prospective effect only, by action of the Executive Committee, which action shall be reported to the Members promptly thereafter. As used in this Agreement, the phrase "net earnings" of the Company means the earnings of the Company, on a modified cash basis of

accounting and as determined in accordance with Paragraph B of Article Sixteen of this Agreement, less the following: (a) any payments made to any Member pursuant to Paragraphs B, C, E or F of this Article Six, (b) any payments pursuant to Paragraph D.3 of Article Seven of "Prior A/R Payment Amounts" (as defined therein), (c) any payments required to be made by the Company under the Members' Retirement Plan, (d) any payments required to be made by the Company to any former Member under any previous operating agreement of the Company or to any former partner of the Partnership under any previous partnership agreement of the Partnership (except to the extent that any such payment represents a return of capital contributed to the Company or to the Partnership), and (e) the payment to each Member of a return at the annual rate of __%, payable monthly, on the amount of capital in excess of \$___ per Unit contributed or deemed to have been contributed by such Member to the Company pursuant to Article Five, from the date such capital is contributed or deemed to be contributed by such Member until the date such capital is refunded to such Member. The Executive Committee shall determine from time to time and announce to the Members a schedule for distributions to the Members of net earnings of the Company or advances in respect thereof.

B. Special Allocations. The Members acknowledge that from time to time (i) the Partnership entered into and the Company may enter into extraordinary billing arrangements for certain matters which resulted and could result in significant accruals of unbilled time value over significant periods of time and (ii) the Partnership formed and invested and the Company may form and invest in entities for the conduct of business other than the practice of law, the income from which may be realized in years following the year

of investment, with resulting inequities in such cases among the Members upon strict application of the modified cash basis principles otherwise applicable under this Agreement. The Members authorize the Executive Committee, from time to time and in its sole and absolute discretion, to designate matters and investments which, in light of extraordinary arrangements applicable thereto, are appropriate for special allocations of income received or to be received, and, upon designation of such a matter or investment, to establish equitable special allocations among the Members of income received or to be received in respect of (i) services performed on such a matter subsequent to February 28, 1990 or (ii) investments made after such date, with the principal factor in the establishment of such special allocations to be the Unit allocations among the Members (including for this purpose where appropriate Unit allocations of the Partnership) during the respective periods when (i) time values were accrued in respect of the matter or (ii) the investments were made. The Executive Committee shall make reference to and consider that certain Memorandum Re: Extraordinary Billing Arrangements/Special Allocations dated as of March 1, 1990, relative to circumstances which may warrant designation of a matter for special allocations and a methodology which may be appropriate in establishing special allocations, but, in light of the inherent unpredictability of the extraordinary circumstances addressed in this paragraph, the Executive Committee shall not be bound by the matters set forth in that Memorandum. Consistent with past practice of the Partnership, nothing contained in this paragraph or elsewhere in this Agreement shall be deemed to confer any rights or interest whatsoever in respect of accrued but unbilled time value or work-in-process of the Company, goodwill of the Company or investments held by the Company (i) upon a retired Member or the estate of

a deceased Member, except to the extent, if any, provided for by the Executive Committee in a special allocation pursuant to this paragraph, or (ii) upon a withdrawing or expelled Member under any circumstance.

C. Bonuses. From time to time as and when it is deemed appropriate, the Executive Committee may award bonuses to Members from the earnings of the Company. Bonuses will be given primarily to reward superior contributions to the Company by Members beyond the expectations of such Members' Unit levels. The aggregate total of bonuses awarded by the Executive Committee with respect to any calendar year shall not exceed ____ percent (_ %) of the sum of (i) the net earnings of the Company which otherwise would have been available for allocation to the Members pursuant to Paragraph A of this Article Six if no bonuses had been awarded plus (ii) the aggregate amount of Annual Guaranteed Payments made in respect of such calendar year pursuant to Paragraph E of this Article Six (such sum being referred to as "Paragraph A Net Income"); provided, however, that if, for any calendar year, the net earnings of the Company are less than the amount required to make distributions or deemed distributions to the Members in respect of such calendar year to the full extent set forth in clauses 1 and 2 of Paragraph D of this Article Six (or would be less than such amount if bonuses totaling ____ percent (_ %) of Paragraph A Net Income were to be awarded), then the aggregate total of bonuses awarded by the Executive Committee with respect to such year shall not exceed ____ percent (_ %) of Paragraph A Net Income. The aggregate total of bonuses which may be awarded by the Executive Committee with respect to any calendar year may be increased upon a vote of the

Members. As and when bonuses are awarded, all Members will be notified of the recipients and the amounts thereof.

D. Priorities and Limitations. The Partnership distributed that certain memorandum entitled 1996 Unit Schedule, copies of which have been provided to each of the Members by the Executive Committee, such memorandum and any successor thereto being herein referred to as the "Unit Schedule." The Units are designated as either "A Units" or "B Units," which designation is solely for the purposes of allocating net earnings of the Company pursuant to this Paragraph D, determining Annual Guaranteed Payments pursuant to Paragraph E of this Article Six and determining the capital to be contributed to the Company pursuant to Article Five hereof. The net earnings of the Company for each calendar year shall be allocated to the holders of A Units and the holders of B Units on the basis of the following priorities and limitations:

1. First, to the holders of A Units to the extent of the excess, if any, of \$_____ per A Unit over the amount of the "Annual Guaranteed Payments" (on a per-Unit basis) provided in Paragraph E of this Article Six and paid for such year to each of the holders of A Units;
2. Next, to the holders of B Units to the extent of the excess, if any, of \$_____ per B Unit over the amount of the "Annual Guaranteed Payments" (on a per-Unit basis) provided in Paragraph E of this Article Six and paid for such year to each of the holders of B Units;
3. Next, to the holders of A Units and the holders of B Units pari passu to the extent of \$___ per Unit, i.e., up to an aggregate allocation for the particular

calendar year to the extent of the excess, if any, of \$_____ per A Unit and per B Unit over the amount of the "Annual Guaranteed Payments" (on a per-Unit basis) provided in Paragraph E of this Article Six and paid for such year to each of the holders of A Units and B Units, respectively; and

4. Next, to the holders of B Units to the extent of \$_____ per B Unit, i.e., up to an aggregate allocation for the particular calendar year to the extent of the excess, if any, of \$_____ per B Unit over the amount of the "Annual Guaranteed Payments" (on a per-Unit basis) provided in Paragraph E of this Article VI and paid for such year to each of the holders of B Units.

The allocation of the portion, if any, of the net earnings of the Company for a particular calendar year in excess of the amount required to make distributions or deemed distributions in respect of such calendar year to the holders of A Units and the holders of B Units as set forth in clauses 1 through 4 of this Paragraph D, shall be determined by the Executive Committee. To the extent of net positive cash flow, the net earnings of the Company for a particular calendar year shall be distributed to the Members to whom such net earnings have been allocated under this Paragraph D, provided that any net positive cash flow distributable upon liquidation of the Company shall be distributed in accordance with Paragraph F of Article Sixteen.

E. Annual Guaranteed Payments. On or before the 15th day of each calendar month, the Company shall pay, as guaranteed payments for services, to the Members holding the respective classes of Units indicated below in this Paragraph E, in approximately equal monthly installments or in equal monthly installments plus one or more

additional, quarterly or annual installments (the amounts of such periodic installments and the timing and amounts of such additional installments, which may vary by class of Units held, being as the Executive Committee may from time to time determine), the following annual amounts (the "Annual Guaranteed Payments"):

1. To the holders of A Units, an amount equal to \$_____ per A Unit; and
2. To the holders of B Units, an amount equal to \$___ per B Unit.

It is understood and agreed that the Annual Guaranteed Payments are intended to be cumulative on an annual basis, and shall be paid fully prior to any distributions to any of the Members in respect of net earnings of the Company.

F. Special Guaranteed Payments. The Company may pay or agree to pay to Members guaranteed payments for services other than Annual Guaranteed Payments ("Special Guaranteed Payments" and, collectively with Annual Guaranteed Payments, the "Guaranteed Payments") in such amounts and subject to such conditions as are approved by vote of the Members upon recommendation of the Executive Committee.

G. Required Approval by Members for Non-Conforming Payments. No payment, or agreement regarding the payment, to any Member or prospective Member of any guaranteed payments or in respect of the allocation of net earnings of the Company, other than in accordance with the provisions of this Article Six and consistent with the Units allocated or proposed to be allocated to such Member or prospective Member, shall be valid unless approved by vote of the Members.

H. Book/Tax Differences. The Members recognize and agree that the amounts reported to them as taxable income for any calendar year may differ from the

aggregate amounts actually paid or distributed to them pursuant to this Article Six for such calendar year.

ARTICLE SEVEN. DISSOLUTION; WITHDRAWAL; POST DISSOCIATION MATTERS

A. **Dissolution.** The Company shall be subject to dissolution upon a vote of the Members. Upon the death, retirement, withdrawal or expulsion of a Member or the occurrence of any other event that terminates the continued membership of a Member in the Company (each an "Event of Dissociation"), the Company shall not dissolve and those persons then living who were Members of the Company at the time of the Event of Dissociation and who have not retired, withdrawn or been expelled from the Company, or otherwise terminated their membership in the Company, shall have the right to continue the business of the Company under the name Eckert Seamans Cherin & Mellott, L.L.C., or any variation thereof. Upon an Event of Dissociation, (i) this Agreement shall remain in full force and effect until amended in accordance with its terms, except that the Units of any deceased, retired, withdrawing or expelled Member, and of any Member who has otherwise terminated his or her membership in the Company, shall be retired, and (ii) the Company shall indemnify and hold harmless those parties hereto who do not continue as Members of the Company as a result of (a) death, or a disability or other retirement under the terms of the Members' Retirement Plan, or (b) becoming an employee of the Company, and their estate, against any and all liabilities of the Partnership incurred prior to the Effective Time. The Company shall not dissolve by reason of a Member becoming a bankrupt or executing an assignment for the benefit of creditors.

B. Withdrawal. A Member desiring to withdraw from the Company (a "Withdrawing Member") shall give written notice to at least two members of the Executive Committee, the Operations Committee and the Executive Director of the Withdrawing Partner's intention to withdraw, which notice shall set forth an effective date for such withdrawal no fewer than 30 days following the delivery of such notice. At any time following delivery of such notice, the Executive Committee may accelerate the effective date of withdrawal provided for in such notice to such earlier date as it deems appropriate in its sole discretion. A Withdrawing Member shall (i) cooperate fully in completion and turnover of all matters in which the Withdrawing Member is involved and in collecting any amounts due the Company for work performed for clients of the Company by the Withdrawing Member and generally assist in diminishing any adverse effects to the Company and its clients by reason of the withdrawal, (ii) before the effective date of the withdrawal, refrain from advising (or causing or permitting others on behalf of the Withdrawing Member to advise) any client of the Company of the impending withdrawal without having first notified at least two members of the Executive Committee, the members of the Operations Committee and the Executive Director at least two business days prior to any such client contact by or on behalf of the Withdrawing Member and affording the Company within such two business days the opportunity to first notify the client or clients of the withdrawal, (iii) subject to provisions of codes of ethics applicable to the Withdrawing Member and the Company, refrain from using (or causing or permitting others on behalf of the Withdrawing Member to use) any form of stationery of the Company to communicate with any client of the Company or any other third party regarding the impending withdrawal or any matter related thereto

unless such communication is first approved by the Chairman of the Executive Committee, the Chairman of the Operations Committee or another representative of the Company designated in writing by either of them, (iv) refrain from removing from the Company's offices any Office Files or Tangible Personal Property, it being agreed that Office Files relating to the business of a particular client will be released to a Withdrawing Member only upon written authorization of that client and payment, or the securing to the satisfaction of the Company, of all amounts owing to the Company by such client and (v) in all other respects comply with procedures for withdrawal established from time to time by the Executive Committee or the Operations Committee.

C. Expulsion. A Member may be expelled from membership in the Company by vote of the Members. A Member may be expelled with or without cause. Membership in the Company is consensual and the agreed concept of expulsion is that a Member may be expelled whenever Members holding in the aggregate a majority of the then total outstanding Units decide that the expelled Member should no longer be a Member of the Company. The vote of the Members concerning expulsion, whether for or against, may be for any reason that the voting Member deems sufficient, and no Member shall be required to give a reason for his or her vote. In the case of a vote to expel, the Members constituting a majority of outstanding Units need not vote for the same reason. Expulsion is not subject to mediation under Article Fifteen. A decision by the membership to expel a Member in accordance with this Paragraph C shall be final, conclusive and binding on the Company and all of its Members and may not be challenged, appealed, reviewed or called into question in arbitration, court or any other forum. An expelled Member shall be entitled solely to the

payments and other benefits from the Company expressly provided for in this Agreement and shall not be entitled to any other payment or compensation for the termination of his or her membership. After expulsion, a Member shall continue to be governed by the provisions of this Agreement which survive membership. Expulsion proceedings may be instituted by (i) a recommendation from the Executive Committee to the Members that a Member be expelled or (ii) a written request by Members holding in the aggregate at least 25% of the outstanding Units that a Member be expelled, which written request shall be signed by all Members joining in the request and shall be sent to the Chairman of the Operations Committee, the Chairman of the Executive Committee, the Member then serving as General Counsel to the Company and the Executive Director. Upon the institution of expulsion proceedings, whether by the Executive Committee or a group of Members, the Executive Committee shall call a meeting of the Members to act upon the recommendation or request for expulsion and shall provide to the Members specific procedures to be followed in connection therewith, such meeting to be held not later than 45 days after the making of the recommendation or request for expulsion unless the recommendation or request is withdrawn or the Member who is the subject thereof withdraws as a Member of the Company. The effective date of the expulsion of a Member shall be a date on or after the Members have voted to expel such Member (i) as determined by the Members in connection with such vote to expel or (ii) in the absence of such determination by the Members, as determined by the Executive Committee.

D. Post Dissociation Matters.

1. In case of the retirement of a Member under the terms of the Members' Retirement Plan, or the withdrawal or expulsion of a Member, the interest in the Company of the retired, withdrawing or expelled Member shall terminate and be treated as acquired by the Company on the Settlement Date for such Member. In the case of death of a Member, the Member's interest in the Company shall terminate and be treated as acquired by the Company as of the date of death of the Member; provided, however, for mutual convenience, all accounting and other determinations specified in this Agreement in respect of such Member shall be made as of the Settlement Date for such deceased Member.

2. A retired, expelled or withdrawing Member or the estate of a deceased Member shall be entitled to receive, in accordance with Article Six but subject to this Paragraph D.2, Annual Guaranteed Payments and allocations of the net earnings of the Company, each on a pro rata basis for the Settlement Year for such Member, with the Units of such Member in such case being deemed equal to the result obtained by multiplying the Units allocated to such Member on the Unit Schedule for such year by a fraction, the numerator of which shall be the number of calendar days elapsed in such year through the Settlement Date for such Member and the denominator of which shall be 365 or 366, as the case may be. Following the Settlement Date for such Member, such Member or estate shall not be entitled to receive any further Guaranteed Payments or distribution of net earnings for the Settlement Year for such Member or advances in respect thereof until a date not later than March 31 of the calendar year following such Settlement Year, on which date (a) the Company shall pay to such Member or estate any amount due such Member or estate

pursuant to this Paragraph D.2, together with the amount of the capital account of such Member due such Member or estate pursuant to Article Five or (b) such Member or estate shall pay to the Company (which payment, to the extent available, may be effected by the Company by way of deduction against the capital account of such Member) the amount of any excess of (i) payments of Guaranteed Payments and distributions of net earnings for such Settlement Year or advances in respect thereof previously made to such Member or estate over (ii) such Member's share of Annual Guaranteed Payments and of the Company's net earnings on a pro rata basis as provided in this Paragraph D.2 for such Settlement Year. Notwithstanding any other provision of this Agreement, such Member or estate will be entitled to participate in the allocation of the portion, if any, of the net earnings of the Company for the Settlement Year for such Member described in the final paragraph of Paragraph D of Article Six if and only to the extent specifically determined and directed by the Executive Committee.

3. A retired, expelled or withdrawing Eligible Member or the estate of a deceased Eligible Member shall also be entitled to receive from the Company an amount (the "Prior A/R Payment Amount") equal to the result obtained by multiplying (a) the amount set forth opposite the name of such Eligible Member on Exhibit 1, attached hereto, by (b) the sum of (i) one plus (ii) the percentage per annum yield to maturity, as of the Settlement Date for such Eligible Member, of the issue of United States Treasury Notes having a maturity date most nearly approximating one year from such Settlement Date. The Prior A/R Payment Amount for the Eligible Member shall be payable to the retired, expelled or withdrawing Eligible Member or the estate of the deceased Member in 30 consecutive

equal monthly installments commencing one year following the Settlement Date for such Eligible Member.

4. Any indebtedness to the Company of a retired, expelled or withdrawing member or the estate of a deceased Member, and any claims by the Company against such Member or estate, may be deducted from any payments due under this Agreement to such Member or estate. Any indebtedness, claims or damages owing to the Company by such Member or estate not recovered by such withholding or by prior payments nevertheless shall be recoverable by the Company.

5. Except as to the indemnities provided for in the penultimate sentence of Paragraph A of this Article Seven and in Paragraph A and Paragraph B of Article Eleven, and except as to such rights as may exist under the Members' Retirement Plan in respect of a retired, deferred vested or deceased Member, a retired, expelled or withdrawing Member or the estate of a deceased Member shall have no claims against or participation in the Company arising out of or relating to any and all rights, options, privileges, assets or property of the Company.

6. Subject to Section 19 of the Members' Retirement Plan, all obligations of the Company with respect to a Member, a former Member, or the estate of a former Member under this Agreement or under the Members' Retirement Plan shall be satisfied only out of the assets, revenue or income of the Company, and none of the Members shall have any personal responsibility or liability for or with respect thereto.

7. Nothing in this Agreement shall eliminate, diminish or expand any Member's or former Member's rights under any malpractice or other liability insurance coverage maintained by the Company.

ARTICLE EIGHT. PERSONAL PROPERTY.

The Tangible Personal Property shall be the property of the Company and may be acquired, held and conveyed in the name of the Company. No Member shall have any interest in Tangible Personal Property. Any law books, pictures, furniture, furnishings and equipment which may be in the offices of the Members, respectively, and which may be the property of the Members, respectively, shall remain their property and shall not constitute part of the property of the Company. For this purpose, any furniture or furnishings in a Member's office which such Member paid for because the total cost of furnishing such Member's office exceeded the Company allowance for such purpose shall be treated as such Members's property. The Member may select which items of furniture or furnishings in such Member's office are to be treated as such Member's separate property, so long as the total original cost of such furniture or furnishings does not exceed the total amount paid by such Member in excess of the allowance for the furnishing of such Member's office.

ARTICLE NINE. BUSINESS EXPENSES.

Each Member shall undertake such professional and business related activities as may be desirable and appropriate for the purpose of maintaining and increasing the professional income of the Company, including, without limitation, the expenses of maintaining bar memberships, professional and practice development, participation in clubs and organizations, entertaining clients and prospective clients, and enhancing the efficiency

and effectiveness of the Company's practice. Members are responsible for paying the resulting business expenses to the extent that they are not reimbursable under the Company's policies in effect from time to time.

ARTICLE TEN. RETIREMENT PLAN.

The Members' Retirement Plan as heretofore or hereafter amended from time to time by the Members of the Company is hereby made a part of this Agreement with the same force and effect as if set forth in full herein. References to "Partners" in the Members' Retirement Plan from and after the Effective Time shall mean Members. In case of any conflict or ambiguity between the terms or provisions of this Agreement and the Members' Retirement Plan, the terms and provisions of the Members' Retirement Plan shall prevail and govern, except that (a) a Member who retires under the terms of the Members' Retirement Plan, or who dies before retirement, shall have an interest in the net income of the Company during or prior to the quarter in which such Member dies or retires only as and to the extent provided in this Agreement and (b) no retirement income payments or survivors' income payments under the Members' Retirement Plan shall be made with respect to any person first admitted to the Partnership (or a predecessor partnership) after December 31, 1994, but each such person, as well as each of the Members, shall participate on a mandatory basis in life insurance, health insurance, disability income insurance and retirement savings programs to the extent from time to time determined by the Executive Committee to be appropriate and desirable.

ARTICLE ELEVEN. INDEMNIFICATION.

The Company, desiring to protect the Members from liability for acts and/or omissions as fiduciaries of its employee benefit plans and/or as Members, adopts the following indemnification program:

A. **ERISA Indemnification.** The Company shall indemnify, defend and hold harmless each Member who is or was a fiduciary, as defined in Section 3(21) of the Employee Retirement Income Security Act of 1974, as amended, with respect to any employee benefit plan, as defined in Section 3(3) of said Act, which has been established by the Partnership or by the Company, and the heirs, estates and personal representatives of such Member, against any and all liability and reasonable expense that may be incurred by any or all of them in connection with or resulting from any claim, action, suit or proceeding (whether brought by or in the right of the Company or otherwise), civil or criminal, or in connection with an appeal relating thereto, in which any or all of them may become involved, as a party or otherwise, by reason of such Member being or having been a fiduciary of any such employee benefit plan of the Partnership or the Company or by reason of any past, present or future action taken or not taken by such Member in his or her capacity as such fiduciary, whether or not such Member continues to be such a fiduciary at the time such liability or expense is incurred; provided that such Member acted in good faith in what he or she reasonably believed to be the best interests of the Partnership or the Company, as the case may be, and, in addition, in any criminal action or proceeding, had no reasonable cause to believe that his or her conduct was unlawful; and provided, further, that the foregoing indemnification shall not include any liability or expense which shall be paid by

an insurer pursuant to the provisions of any insurance policy maintained by the Partnership or the Company, as the case may be.

B. Indemnification of Members. The Company shall indemnify, defend and hold harmless each Member, and the heirs, estates and personal representatives of such Member, against any and all liability and reasonable expense that may be incurred by any or all of them in connection with or resulting from any claim, action, suit or proceeding (whether brought by or in the right of the Company or otherwise), civil or criminal, or in connection with an appeal relating thereto, in which any or all of them may become involved, as a party or otherwise, by reason of any action taken or not taken by such Member in his or her capacity as a Member of the Company, whether or not such Member is a Member at the time such liability or expense is incurred; provided that such Member acted in good faith in what he or she reasonably believed to be in the best interests of the Company, and, in addition, in any criminal action or proceeding, had no reasonable cause to believe that his or her conduct was unlawful; and provided, further, that the foregoing indemnification shall not include any liability or expense which shall be paid by an insurer pursuant to the provisions of any insurance policy maintained by the Company.

C. Amounts Indemnified. As used in this Article Eleven, the terms "liability" and "expense" shall include, but shall not be limited to, amounts of judgments, fines or penalties, and amounts paid in settlement; provided, that said terms (i) shall include an amount paid in settlement only if the settlement is made or approved by the Company, (ii) shall include counsel fees and disbursements only if legal counsel to the Company (who may be the Company's internal general counsel) has approved as necessary or desirable the

retention by the indemnified party of counsel separate from counsel to the Company or if a court has determined that the retention of separate counsel by the indemnified party is required and (iii) shall in no event include any amount of punitive or exemplary damages. Nothing contained herein is intended to preclude any Member from retaining separate counsel in any matter at the expense of such Member.

D. No Presumption Created. The termination of any claim, action, suit or proceeding, civil or criminal, by judgment, settlement (whether with or without court approval) or conviction or upon plea of guilty or nolo contendere, or its equivalent, shall not create a presumption that a Member did not meet the standards of conduct set forth in this Article Eleven.

E. Advancement of Expenses. Expense incurred with respect to any such claim, action, suit or proceeding may be advanced by the Company prior to the final disposition thereof upon receipt of an undertaking by or on behalf of the recipient to repay such amount unless it shall ultimately be determined that the recipient is entitled to indemnification under this Article Eleven.

F. Exclusions. Indemnification under Paragraph A and/or Paragraph B of this Article Eleven shall not be made in any case where the act giving rise to the claim for indemnification is determined by a court or other tribunal having jurisdiction to have constituted actual dishonesty, willful misconduct or recklessness, and, if such issue has not been determined at the time a claim for indemnification is made, the Company shall have the right to seek such determination through judicial or arbitration proceedings. Except to the extent provided in the penultimate sentence of Paragraph A of Article Seven or in Paragraph

A of this Article Eleven, nothing contained in this Agreement shall be construed as establishing any obligation of the Company to indemnify any person in respect of any act or event occurring prior to the Effective Time.

ARTICLE TWELVE. CONFIDENTIALITY.

A. **Confidential Information.** The Members agree to treat information concerning the business or financial condition of the Company, the commencement, prosecution or conclusion of any mediation, arbitration or litigation proceedings between or among any Members and/or the Company, the terms of this Agreement, all other information designated by the Company or a Member as confidential or which a party knows or has reason to know is proprietary, confidential or non-public, including without limitation financial information, together with summaries, analyses and excerpts thereof (herein collectively referred to as the "Material"), in accordance with the provisions of this Agreement and to take or abstain from taking certain other actions herein set forth. The term "Material" does not include information which: (i) is or becomes available to the public other than as a result of a disclosure by the Company or its Members, employees, agents or advisors; or (ii) becomes available to a Member on a non-confidential basis from a source other than another Member, provided that such source is not known by the recipient thereof to be bound by a confidentiality agreement with, or other obligations of secrecy to, the Company or its Members concerning such information.

B. **Nondisclosure.** Each Member shall take such care as he or she takes with his or her own confidential information to avoid disclosure of the Material to third parties without the consent of the Chairman of the Operations Committee. In furtherance

thereof, no party shall make any communication concerning the Material to any third party; provided that any party shall be entitled to make any disclosure required by law.

C. Surrender of Materials. Upon termination of a Member's interest in the Company, the Member shall promptly deliver to the Company all written material containing or reflecting any information in the Material. Unless otherwise agreed by the Company, a former Member will not retain any copies, extracts or other reproductions, in whole or in part, of such written material, and all documents, memoranda, notes and other writings whatsoever prepared by the Member based on the information in the Material shall be destroyed; provided, however, that the former Member may retain one copy of the Material for purposes of identifying the subject matter of this Agreement.

ARTICLE THIRTEEN. SPECIAL MEMBERS.

The Company may from time to time appoint one or more persons to the position of "Special Member." Although persons appointed to such position may be referred to as "members" of the Company, such persons will not be Members under this Agreement or have any rights under this Agreement or the Members' Retirement Plan, but rather such persons will be employed by the Company upon such terms, and shall have such rights, as are provided pursuant to the Statement of Policy Regarding Special Members issued, subject to modification from time to time, by the Executive Committee.

ARTICLE FOURTEEN. WAIVER.

In no event shall the Company seek or obtain contribution or indemnity from any Member or former Member or former partner of the Partnership with respect to the

amount of any deductible, retention or co-insurance under a malpractice policy maintained by the Partnership or the Company, as the case may be.

ARTICLE FIFTEEN. CLAIMS RESOLUTION.

A. **Mediation.** The Members agree that all "Claims" (as defined in Paragraph B of this Article Fifteen) whether accruing before or after the date of this Agreement, between or among Members, or between any Members or former Members and the Company or former partners of the Partnership shall be submitted to non-binding mediation before a mediator who is affiliated with or has been trained by a nationally-recognized mediation firm. The party asserting the Claim and the party responding to the Claim shall mutually select the mediator, and the Company shall pay the first five days of such mediator's compensation and expenses, with the balance of such compensation and expenses to be shared equally by the parties. The Company shall be entitled to participate in any mediation, regardless of whether or not it is a claimant or respondent. The mediator shall not suggest a resolution of a Claim which is contrary to this Agreement, the Member's Retirement Plan or any policy established by the Executive Committee. The participation in mediation hereunder by any Member, former Member, former partner or the Company shall not constitute an admission or agreement to any extent whatsoever that the Claim submitted to mediation is subject to arbitration or litigation.

B. **Definition of "Claims."** "Claims" shall be defined for purposes of this Article Fifteen as all claims concerning Company business or affairs for legal or equitable relief between or among parties subject to mediation under Paragraph A of this Article Fifteen. A disagreement, controversy or dispute about the policies or operations of the

Company, including without limitation business or policy decisions and judgments made by the Executive Committee, the Operations Committee or others such as department heads or partners-in-charge of offices to whom the decision or judgment has been delegated, does not constitute a Claim; instead, a Claim must state the elements of a claim for legal or equitable relief.

C. Exclusivity; Statute of Limitations Tolloed. This Article Fifteen shall be binding upon and inure to the benefit of the Members and their successors and assigns. Completion of the mediation process shall be an absolute condition precedent to the commencement of any arbitration or litigation proceeding, except that if provisional or emergency relief or remedies, such as a temporary restraining order or preliminary injunction, is necessary or appropriate to enforce this Agreement, preserve the status quo, prevent irreparable harm or preserve or protect the rights and privileges of clients or relationships with clients, the Company or a Member may seek such relief or remedy against the Company or any Member by a proceeding in the Common Pleas Court of Allegheny County or the United States District Court for the Western District of Pennsylvania. To the extent that the Court permits, such proceeding shall be under seal. Any applicable statutes of limitations shall be tolled for the period beginning on the day mediation is requested in writing by a claimant and ending thirty days following the mediator's written notice that the mediation procedure has ended.

D. Confidentiality of Proceedings. In furtherance of the objectives of this Agreement, the Members agree that in the event of any arbitration or litigation concerning a Claim or any other claim involving the business and operations of the Company or of the

Partnership, they will conduct all proceedings with the highest regard for confidentiality, including if necessary, a request (or a concurrence to a request) that records be maintained under seal.

ARTICLE SIXTEEN. CAPITAL ACCOUNTS; DETERMINATIONS AND ALLOCATIONS PER REGULATIONS.

A. **Establishment of Capital Accounts.** A single, separate capital account shall be maintained for each Member. The capital accounts of the Partners of the Partnership, as reflected on the books of the Partnership immediately prior to the Merger, shall be the capital accounts of the Members effective immediately following the effective time of the Merger. Thereafter, each Member's capital account shall be credited with the amount of money and the fair market value of property (net of any liabilities secured by such contributed property that the Company assumes or takes subject to) contributed by that Member to the Company, the amount of any Company liabilities assumed by such Member (other than in connection with a distribution of Company property), and such Member's share of Company net earnings (including, without limitation, tax exempt income). Each Member's capital account shall be debited with the amount of money and the fair market value of property (net of any liabilities that such Member assumes or takes subject to) distributed to such Member, the amount of any liabilities of such Member assumed by the Company (other than in connection with a contribution of capital), and such Member's share of Company losses (including, without limitation, items that may be neither deducted nor capitalized for federal income tax purposes). For purposes of this Agreement, distributions reducing a Member's capital account shall not include (i) payments to the Member, pursuant to clause (e) of Paragraph A of Article Six, of any return on capital contributed in excess of

\$275 per Unit nor (ii) amounts advanced to any Member in anticipation of distributable net earnings for the respective year until the account accumulating any excess of such advances over the allocations of net earnings to the respective Member under Paragraph D of Article Six is closed out to capital as of the end of such year or any earlier Settlement Date for such Member.

B. Determination of Net Earnings and Maintenance of Capital Accounts in Accordance with Regulations. So that the allocation of net earnings, income, losses, deductions and credits under this Agreement shall be respected in accordance with the Internal Revenue Code of 1986, as amended (the "Code"), and the regulations thereunder, as they may be amended and applicable from time to time (the "Regulations"), notwithstanding any provision of this Agreement to the contrary (including, without limitation, Paragraph D of Article Six), (A) net earnings, income, gain, loss, deductions and credits (including items thereof) shall be determined and allocated, (B) each Member's capital account shall be maintained and adjusted and (C) all other actions required by the Regulations to be taken to conform to the Regulations shall be taken by the Company, all in accordance with the Regulations, including, without limitation, (i) the adjustments permitted or required by Code Section 704(b) and the principles expressed in Code Section 704(c) and the Regulations thereunder and (ii) the adjustments required to make allocations and maintain capital accounts in conformity with one of the safe harbors for "substantial economic effect" set forth in the Regulations under Code Section 704(b). (It is understood that the provisions of this Article Sixteen are intended to adhere to the "alternate test for economic effect" set forth in Regulation §1.704-1(b)(2)(ii)(d).) To this end, the following special allocations of income,

gain, loss and expense shall be made notwithstanding any other provision of this Agreement to the contrary:

1. Deficit Capital Account Allocations. Subject to the remaining provisions of this Paragraph B.1, no allocation of expenses or losses shall be made pursuant to the terms of this Agreement to the extent such allocation would cause or increase a net deficit balance in a Member's capital account as of the end of the period to which such allocation relates. Such expenses and losses shall instead be allocated among the other Members not subject to this limitation ratably in accordance with their relative Participating Percentages (as that term is defined in Paragraph E of this Article Sixteen). For purposes of this Paragraph B.1, the following rules shall apply:

(i) each Member's net deficit balance in such Member's capital account shall be determined by adding to such capital account balance the amount of such Member's share (as determined pursuant to Regulation Section 1.704-2) of the total minimum gain of the Company as of the end of the period with respect to which such determination is being made; and

(ii) in determining whether an allocation of loss or expense would cause or increase a net deficit balance in a Member's capital account as of the end of the period to which such allocation relates, the initial balance of such Member's capital account shall be treated as if it reflected an amount equal to the excess of any distributions that as of the end of such period, reasonably are expected to be made to such Member in any future period over the net

earnings reasonably expected to be allocated to such Member during (or prior to) the period in which such distributions are expected to be made.

2. **Qualified Income Offset Provision.** If a Member unexpectedly receives an adjustment, allocation or distribution pursuant to this Agreement which causes or increases a net deficit balance in such Member's capital account as of the end of the period to which such adjustment, allocation or distribution relates in excess of any dollar amount of such net deficit balance that such Member is obligated to restore pursuant to this Agreement, such Member will be allocated items of gross income and gain in an amount and manner sufficient to eliminate such net deficit balance as quickly as possible. The rules set forth in clauses (i) and (ii) of Paragraph B.1 of this Article Sixteen shall apply for purposes of determining whether any adjustment, allocation or distribution would cause or increase a net deficit balance in any Member's capital account.

3. **Allocations of Nonrecourse Deductions; Minimum Gain Chargeback.** In compliance with Regulation Section 1.704-2, allocations of nonrecourse deductions (as that term is defined in the Regulations) shall be made among the Members in accordance with the Participating Percentages of the Members; provided that allocations of Partner nonrecourse deductions (as that term is defined in the Regulations) shall be made among the Members in accordance with the ratios in which the Members (or the affiliates of any Member) share the economic risk of loss with respect to the Partner nonrecourse liabilities (as that term is defined in the Regulations) to which such Partner nonrecourse deductions are attributable. If there is a net decrease in partnership minimum gain (as that term is defined in the Regulations) or Partner nonrecourse liability minimum gain (as

determined pursuant to Regulation Section 1.704-2) during any period, then each Member shall be allocated items of gross income and gain in accordance with the provisions of Regulation Section 1.704-2.

4. Subsequent Allocations. Any special allocations of items of income, gain, loss or expense made pursuant to Paragraph B.1, B.2 or B.3 of this Article Sixteen shall be taken into account in computing subsequent allocations of income, gain, loss and expense pursuant to this Agreement, so that the net amount of any item of income, gain, loss and expense allocated to each Member pursuant to this Agreement shall, to the extent possible, be equal to the amount of such items of income, gain, loss and expense that would have been allocated to such Member pursuant to this Agreement if the special allocations of income, gain, loss or expense required by this Paragraph B had not been made.

C. Allocations for Federal Income Tax Purposes. Allocations of items of income, gain, loss, deduction, preference and credit for federal income tax purposes shall be made in the same manner as the corresponding item included in the determination of net earnings is allocated for book and capital account maintenance purposes, subject to adjustment to conform to the provisions of Code Section 704(c) and the Regulations thereunder. Items of credit shall be allocated in a manner corresponding to the allocation of the expenditures or other activity which gave rise to the credit, or if none, prorata in accordance with the Members' Participating Percentages.

D. Unallocated Net Earnings. To any extent that net earnings for any calendar year exceed the aggregate amount allocated for distribution to Members under

Paragraph D of Article Six, such unallocated net earnings shall be allocated to the Members prorata in accordance with the Members' Participating Percentages.

E. Definition of "Participating Percentage." The "Participating Percentage" of a Member shall mean that percentage determined at any relevant time by dividing the number of Units allocated to the Member in the Unit Schedule at such time by the total number of Units of all Members at such time; provided that for purposes of determining a Member's Participating Percentage for an entire fiscal period of the Company, the Units allocated to each of the Members on the Unit Schedule for such period will be reduced ratably based on the number of calendar days during such period that the Member was not a Member of the Company (whether by reason of having died, not yet having been admitted to, or having withdrawn or been expelled from, the Company).

F. Distribution of Proceeds from the Liquidation of the Company. The net proceeds of liquidation and any other funds or property of the Company available incident to its liquidation shall be distributed and applied to the extent available in the following order of priority:

1. First, to the payment of debts and liabilities of the Company, including any debts and liabilities to a Member arising under this Agreement;

2. Next, to the setting up of any reserves which the Executive Committee or other person or body acting as liquidating agent or committee, as the case may be, deems reasonably necessary for contingent or unforeseen liabilities or obligations of the Company; and

3. Next, to the Members with net positive balances in their respective capital accounts in the proportion that the balance in the capital account of each Member with a net positive balance in such Member's capital account bears to the balances in the capital accounts of all Members with net positive balances in their respective capital accounts.

For purposes of this Paragraph F, the respective balance in the capital account of each Member shall be determined (i) after allocating all net earnings, income, gain, loss and expense of the Company pursuant to the terms of this Agreement and (ii) after taking into account all prior distributions to the Members and advances in respect thereof. In addition, if property is distributed in kind to a Member, such property shall be fairly valued by the Executive Committee or the liquidating agent or committee, as the case may be, to determine the gain or loss which would have resulted if the property were sold for its fair market value, and, to the extent not previously reflected in the Members' capital accounts, the respective balance of the capital account of each Member shall be adjusted to reflect such gain or loss that would have been allocated to such Member if such property had been sold at its then fair market value.

ARTICLE SEVENTEEN. RESTRICTION ON TRANSFER. No Member may transfer all or any portion of his or her interest in the Company, except to the Company in accordance with the terms of this Agreement, and any transfer or attempted transfer in violation of this Article Seventeen shall be void and of no effect.

ARTICLE EIGHTEEN. MISCELLANEOUS PROVISIONS.

A. **Complete Agreement.** This Agreement embodies the full and complete agreement of the parties hereto with respect to the subject matter hereof and, from and after the Effective Time, this Agreement replaces and supersedes all prior partnership agreements of the Partnership and predecessor partnerships.

B. **Governing Laws.** This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania (excluding Pennsylvania's law with respect to conflict of laws).

C. **Amendment.** Neither this Agreement nor the Certificate of Organization may be modified or amended except by vote of the Members in accordance with Article Three hereof.

D. **Interpretation and Construction.** Whenever required by the context of this Agreement, the use of the singular number shall include the plural number, and vice versa, and the use of any gender shall include all genders. The headings and titles appearing in this Agreement are for convenience of reference only and shall not affect the interpretation of any provision of this Agreement. Whenever a reference is made in this Agreement to an Article or Paragraph, such reference shall be to an Article or Paragraph of this Agreement unless otherwise indicated.

E. **Counterparts.** This Agreement may be executed in one or more counterparts, and by different signatories hereto in separate counterparts, each of which when executed shall be deemed to be an original but all of which taken together shall constitute one and the same agreement.

**WITNESS the hands and seals of the parties as of the day and year first above
written, intending to be legally bound hereby.**